

Clement & Murphy

PLLC

July 18, 2024

VIA ECF

Molly Dwyer
Clerk of Court
Office of the Clerk
U.S. Court of Appeals for the Ninth Circuit
P.O. Box 193939
San Francisco, CA 94119-3939

Re: *Duncan v. Bonta*, No. 23-55805

Dear Ms. Dwyer:

The AG’s invocation of *Delaware State Sportsmen’s Association v. Delaware Department of Safety & Homeland Security*, Nos. 23-1633, 23-1634 & 23-1641 (3d Cir. July 15, 2024), is puzzling. The Third Circuit said exactly nothing about the merits of the Second Amendment issue before it. *See* Op.27 (“We express no view of the merits.”). The Third Circuit’s musings about the mechanics of preliminary-injunction analysis in constitutional cases parts company with this Court’s decision in *Baird v. Bonta*, 81 F.4th 1036 (9th Cir. 2023)—a fact the Third Circuit explicitly acknowledged, *see* Op.17, 20, but the AG ignores. Finally, the Third Circuit’s discussion was confined to the (non-merits) equitable considerations at issue in preliminary-injunction appeals, but *this case* is not a preliminary-injunction appeal; the district court issued a final judgment in Appellees’ favor. And for all its musings about preliminary injunctions, not even the Third Circuit suggested that there should be no relief at all against a law that violates the Second Amendment, which California’s sweeping ban plainly does. This Court should affirm.

Respectfully submitted,

s/Erin E. Murphy
Erin E. Murphy

Counsel for Appellees

Cc: All Counsel of Record